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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES of the) No. C 08 01067 CW
CARPENTERS HEALTH AND WELFARE)
TRUST FUND FOR CALIFORNIA;)
CARPENTERS VACATION-HOLIDAY TRUST)
FUND FOR NORTHERN CALIFORNIA;)
CARPENTERS PENSION TRUST FUND FOR) **NOTICE OF MOTION AND MOTION**
NORTHERN CALIFORNIA; CARPENTERS) **FOR DEFAULT JUDGMENT BY**
ANNUITY TRUST FUND FOR NORTHERN) **COURT**
CALIFORNIA; and CARPENTERS TRAINING)
TRUST FUND FOR NORTHERN)
CALIFORNIA, and CARPENTERS 46) Date: June 6, 2008
NORTHERN CALIFORNIA COUNTIES) Time: 9:30 a.m.
CONFERENCE BOARD for itself and on behalf) Courtroom: A, 15th Floor
of NORTHERN CALIFORNIA CARPENTERS)
REGIONAL COUNCIL and CARPENTERS)
UNION LOCAL NO. 22) **Honorable Joseph C. Spero**

Plaintiffs,

v.

SAUL M. CRUZ, Individually; SAUL M. CRUZ,)
Individually and doing business as SMC)
MODULAR INSTALLATION; MAGDALENA)
L. CRUZ, Individually; MAGDALENA L.)
CRUZ, Individually and doing business as SMC)
MODULAR INSTALLATION; SMC)
MODULAR INSTALLATION; Does 1 through)
10, inclusive)

Defendants.

I. NOTICE**TO THE DEFENDANTS AND THEIR COUNSEL:**

PLEASE TAKE NOTICE that on June 6, 2008, at 9:30 a.m. in Courtroom A (15th Floor), in the above captioned Court, Plaintiffs The Board of Trustees of the Carpenters Health and Welfare Trust Fund for California; Carpenters Vacation-Holiday Trust Fund for Northern California; Carpenters Pension Trust Fund for Northern California; Carpenters Annuity Trust Fund for Northern California; and Carpenters Training Trust Fund for Northern California, and Carpenters 46 Northern California Counties Conference Board for itself and on behalf of Northern California Carpenters Regional Council and Carpenters Union Local No. 22 (hereinafter "Plaintiffs") will move this Court for an order granting entry of a default judgment for unpaid contributions, interest thereon, and attorneys' fees and costs, and for an order compelling Saul M. Cruz, Individually; Saul M. Cruz, Individually and doing business as SMC Modular Installation; Magdalena L. Cruz, Individually; Magdalena L. Cruz, Individually and doing business as SMC Modular Installation; and SMC Modular Installation (hereinafter "Defendants") to forthwith submit to an audit of their books, records, papers and reports as required by the Agreements to which they are bound. Plaintiffs will also move the Court for an order granting entry of a default judgment confirming the Decision and Awards of Arbitrator Gerald R. McKay's issued November 15, 2007, and of Arbitrator Fred R. Wright issued January 9, 2008, pursuant to the terms of a collective bargaining agreement between the parties. The motion will be brought pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedures (F.R.C.P.), and will be based on the following grounds. The Clerk entered default against the Defendants on April 1, 2008, who were timely served with the complaint on February 26, 2008, but failed to answer the complaint.

Plaintiffs are therefore entitled to entry of default judgment against the Defendants under F.R.C.P. 55(b)(2) by the Court. This Notice and Motion are supported by the Memorandum Points and Authorities, Declaration of Jim Crotty, Declaration of Michael J. Plommer, Declaration of Concepción E. Lozano-Batista and the [Proposed] Judgment, all of which are filed concurrently herewith.

1 **II. MOTION**

2 Plaintiffs, by and through their undersigned counsel, hereby apply, pursuant to Rule
3 55(b)(2) of the Federal Rules of Civil Procedure, for judgment by default in their favor and against
4 Defendants for (1) an order confirming the Decision and Award of Arbitrator Gerald R. McKay's
5 on Grievance #07-141, issued November 15, 2007 in its entirety; (2) an order confirming the
6 Decision and Award of Arbitrator Fred R. Wright on Grievance #07-165, issued January 9, 2008 in
7 its entirety; (3) an order confirming the Decision and Award of Arbitrator Fred R. Wright on
8 Grievance #07-166, issued January 9, 2008 in its entirety; (4) an Order directing Defendants to
9 submit to an audit of their books and records as required by the agreement to which they are
10 bound; (5) that upon the completion of the audit, contributions due and owing in an amount to be
11 determined by said audit and interest thereon; (6) reasonable attorneys' fees, and Plaintiffs' costs
12 of suit; (7) for an order directing and permanently enjoining Defendant to timely submit all
13 required monthly contribution reports and contributions due and owing by Defendant; (8) for this
14 Court to retain jurisdiction; and (9) for such and further relief as to this Court seems just and
15 proper.

16 The grounds for this application are as follows:

- 17 1. The Clerk of the Court entered the Request for Entry of Default on April 1, 2008,
18 against Defendant, for failure to answer or otherwise respond to the complaint herein; and
19 2. Plaintiffs are entitled to the relief sought herein.

20 Dated: April 14, 2008

21 WEINBERG, ROGER & ROSENFELD
22 A Professional Corporation

23
24 By: /s/
25 CONCEPCIÓN E. LOZANO-BATISTA

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